IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6730 of 1987

For Approval and Signature:

Hon'ble THE CHIEF JUSTICE MR. D.S.SINHA
and
Hon'ble MR.JUSTICE J.M.PANCHAL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? :

2. To be referred to the Reporter or not? :

3. Whether Their Lordships wish to see the fair copy of the judgement? :

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? :

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? :

DIRECTOR

Versus

MUKESHBHAI C TANNA

Appearance:
MR SHIRISH JOSHI for Petitioners
MR VH DESAI for Respondent No. 1
MR PK SHASHTRI for Respondent No. 1
MS NANDINI JOSHI, AGP for Respondent No. 2
NOTICE SERVED for Respondent No. 3-4

CORAM : THE CHIEF JUSTICE MR. D.S.SINHA
and
MR.JUSTICE J.M.PANCHAL

Date of decision: 19/09/2002

ORAL JUDGEMENT

(Per : THE CHIEF JUSTICE MR. D.S.SINHA)

#. Heard Mr.Shirish Joshi, learned counsel appearing for the petitioners.

#. Instant Special Civil Application under Articles 226 and 227 of the Constitution of India is directed against the order and judgment dated 8th December, 1987, passed by the Gujarat Affiliated Colleges Services Tribunal at Ahmedabad, hereinafter called "the Tribunal", in Application No.80 of 1987, between Mukeshbhai Chhotalal Tanna and Director, Lok Bharti, Sanosara, District: Bhavnagar and others, whereby the Tribunal quashed the order dated 1st May, 1986, purporting to terminate the services of Mukeshbhai Chhotalal Tanna, the respondent No.1 herein.

#. The acts and the events constituting the facts of the case, as they emerge from the record, are these:

#. Pursuant to the Resolution No.22 dated 29th November, 1984, passed by Lok Bharti, Sanosara, District: Bhavnagar, an organisation running Lok Seva Maha Vidyalaya, Sanosara, District: Bhavnagar, hereinafter called "the institution", the respondent No.1 was appointed as Professor of Hindi in the institution, on probation with effect from 1st December, 1984. The English translation of the Resolution dated 29th November, 1984, is to be found on record as Annexure-A to the petition. As is apparent from Resolution of the organisation, No.6 dated 1st June, 1985, the English translation whereof is appended to the petition as Annexure-B, the probationary period of the respondent No.1 was extended for a period of one year from 1st June, 1985 to 31st May, 1986.

#. During the period of probation, a communication dated 5th October, 1985, signed by the Director of the organisation and the Principal of the institution was addressed to the respondent No.1, inviting his attention, interalia, to the fact that he was engaged on probation for a period of two years; that his working as Professor had not been found satisfactory; that he was unable to explain with illustrations the hard points by making them easier in such a manner that the students would find interest in studying the poems, stories, novels, etc.; that the students were not satisfied with his teaching work; and that he had furious behaviour. This communication was not followed by any immediate action. However, the respondent No.1 was served with a notice dated 1st May, 1986, notifying his discharge from services with effect from 31st May, 1986. The English translation of the notice of discharge dated 1st May,

1986 is appended to the petition as Annexure-D.

#. Aggrieved by the termination of his services in pursuance of the notice dated 1st May, 1986, the respondent No.1 approached the Tribunal.

#. The Tribunal allowed the application of the respondent No.1, vide its order dated 8th December, 1987, and quashed the order of termination dated 1st May, 1986. It also granted to the respondent No.1 the consequential reliefs. The Director of the organisation and the Principal of the institution, the petitioners herein, feel aggrieved by the order of the Tribunal dated 8th December, 1987. Hence this petition.

#. The twin contentions which found favour with the Tribunal for setting aside the order of termination were, (a) that the termination order was not preceded by any inquiry; and (b) that no approval of the Vice Chancellor of the affiliating University was obtained before terminating the services of the respondent No.1. These contentions were based on the provisions of sub-section (1) of Section 14 of the Gujarat Affiliated Colleges Services Tribunal Act, 1982, hereinafter called "the Act", which reads thus:

> "14. Dismissal, removal or reduction in rank of college employees : (1) No college employee shall be dismissed or removed or reduced in rank nor shall his service be otherwise terminated by the manager of a college except after:-
>
> (a) an inquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges, and
>
> (b) the action proposed against him is approved by the Vice Chancellor of the relevant University
>
> Provided that nothing in this sub-section shall apply to any college employee who is appointed temporarily for a period of less than a year."

#. Mr.Shirish Joshi, learned counsel appearing for the petitioners, contends that on the facts and circumstances of the case, the provisions of sub-section (1) of Section 14 of the Act were not attracted; and that the Tribunal committed manifest error in setting aside the order of termination of services of the respondent No.1 for non

compliance of the requirements of the aforesaid provisions. Elaborating his submission, Mr.Joshi submits that the provisions of sub-section (1) of Section 14 of the Act will be attracted only when the order is held to have been passed by way of punishment, which was not the case here.

##. The contention raised by the learned counsel of the petitioners necessarily calls upon this Court to investigate the question whether the termination of services of the respondent No.1 was punitive in nature.

##. It is to be recalled that the termination of services of the respondent No.1 was preceded by communication dated 5th October, 1985, addressed to the respondent No.1 by the Director of the organisation and the Principal of the institution, listing and attributing to the respondent No.1 various lapses on his part. At this juncture it is apposite to reproduce below the translated version of the said communication dated 5th October, 1985, appended to the petition as Annexure-C:

> "Lok Bharati-Sanosara,
> District-Bhavnagar
> Date: 5.10.1985

Brother Shri Mukeshbhai Tanna,

It has become necessary to bring one aspect to your notice.

The institution has engaged you on probation for a period of two years.

It can be thought of making you permanent only if you are found to be sufficiently competent and successful in your working as a Professor and in the institutional liabilities, during this period.

Your working as Professor has not been found to be satisfactory.

You still have some time with your for this. You are unable to explain with illustrations, the hard points by making them easier in such a manner that the students would find interest in studying the poems, stories, novels etc.. Students are not satisfied with your teaching work.

Your attention has been orally invited in person, to your furious behaviour. Your competency and readiness in the

class room should be taken as an unavoidable qualification.

It is hoped that you will take care of this.

Sd. Kumudchandra Thaker Sd.Mansukhlal Salla
 Director Principal
Lok Bharati - Sanosara, Lok Seva Maha Vidyalaya,
District - Bhavnagar Lok Bharati - Sanosara

To,
 Shri Mukesh Tanna,
 Professor in Hindi Signature _____

   TRUE COPY"

 [Note: Emphasis supplied by the Court]

##. The communication dated 5th October, 1985, reproduced above, clearly and unequivocally notifies that the working of the respondent No.1 as Professor had not been found satisfactory; that he was unable to explain with illustrations, the hard points by making them easier in such a manner that the students would find interest in studying the poems, stories, novels etc.; that students were not satisfied with the teaching work of the respondent No.1; that the respondent No.1 had furious behaviour; and finally, that he was incompetent. The above notification was followed by the order of termination. A conjoint and meaningful reading of the order of termination and the communication dated 5th October, 1985, leaves no room for any doubt that the services of the respondent No.1 were terminated on account of proved incompetence and misbehaviour, and had the effect of stigmatizing him. That being so, the conclusion that the order of termination of services of the respondent No.1 was punitive in nature attracting the provisions of sub-section (1) of Section 14 of the Act, which required an inquiry against the respondent No.1, opportunity to him to defend, and approval of the Vice Chancellor of the affiliating University, is inescapable.

##. Admittedly, neither any inquiry was held nor the approval of the Vice Chancellor for terminating the services of the respondent No.1 was obtained. In the absence of the requisite inquiry and approval by the Vice Chancellor of the affiliating University, the order of termination could not be held to be valid. It, being contrary to the requirements of the provisions of sub-section (1) of Section 14 of the Act, has rightly been quashed by the Tribunal. Having quashed the order

of termination of services of the respondent No.1, the Tribunal also rightly granted to the respondent No.1 the consequential benefits. In the opinion of the Court, the impugned order of the Tribunal dated 8th December, 1987, is perfect, and not liable to be interfered with by this Court in exercise of its special and extraordinary discretionary writ jurisdiction under Articles 226 and 227 of the Constitution of India.

##. In the result, the petition fails, and is hereby dismissed. Interim order stands vacated. Rule is discharged. There is no order as to costs.

(D.S.Sinha, C.J.)

(J.M.Panchal, J.)

(sunil)